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October 20, 2021

Hon. John G. Koeltl
U.S. District Judge
United States Courthouse
500 Pearl St.
New York, NY 10007

Via CM/ECF

Re: *Kingdom of Belgium, Federal Public Service Finance v. Xiphias LLC Pension Plan, et al.*, No. 1:21-cv-06392; *Kingdom of Belgium, Federal Public Service Finance v. Traden Investments Pension Plan, et al.*, No. 1:21-cv-06399; *Kingdom of Belgium, Federal Public Service Finance v. Lion Advisory Inc. Pension Plan, et al.*, No. 1:21-cv-06402; *Kingdom of Belgium, Federal Public Service Finance v. Delvian LLC Pension Plan, et al.*, No. 1:21-cv-06404; *Kingdom of Belgium, Federal Public Service Finance v. Michelle Investments LLC Pension Plan, et al.*, No. 1:21-cv-06405; *Kingdom of Belgium, Federal Public Service Finance v. Ganesha Industries Pension Plan, et al.*, No. 1:21-cv-06407; and *Kingdom of Belgium, Federal Public Service Finance v. AOI Pension Plan, et al.*, No. 1:21-cv-06408; Request for Pre-Motion Conference

Dear Judge Koeltl:

Carlton Fields, P.A. (“Carlton Fields”) is counsel for Defendants FGC Securities LLC (“FGC”) and Stephen Wheeler (“Wheeler”) (collectively, the “FGC Securities Defendants”) in the following actions (together, “the Actions”).

- *Kingdom of Belgium, Federal Public Service Finance v. Xiphias LLC Pension Plan, et al.*, No. 1:21-cv-06392;
- *Kingdom of Belgium, Federal Public Service Finance v. Traden Investments Pension Plan, et al.*, No. 1:21-cv-06399;
- *Kingdom of Belgium, Federal Public Service Finance v. Lion Advisory Inc. Pension Plan, et al.*, No. 1:21-cv-06402;
- *Kingdom of Belgium, Federal Public Service Finance v. Delvian LLC Pension Plan, et al.*, No. 1:21-cv-06404;
- *Kingdom of Belgium, Federal Public Service Finance v. Michelle Investments LLC Pension Plan, et al.*, No. 1:21-cv-06405;

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- *Kingdom of Belgium, Federal Public Service Finance v. Ganesha Industries Pension Plan, et al.*, No. 1:21-cv-06407; and
- *Kingdom of Belgium, Federal Public Service Finance v. AOI Pension Plan, et al.*, No. 1:21-cv-06408.

This Court has scheduled an initial conference in the Actions on November 23, 2021.

Pursuant to Your Honor's Individual Practices, Section II.B, the FGC Securities Defendants respectfully request a pre-motion conference and permission to file an omnibus motion to dismiss in response to all of the Complaints pursuant to Fed. R. Civ. P. 12(b)(6). Defendants' current deadline to respond to the Complaints in each Action is November 1, 2021.

The Complaint in each Action is brought by the Kingdom of Belgium, Federal Public Service Finance ("the Kingdom of Belgium"). The Kingdom of Belgium alleges certain individuals or entities created a pension plan and that such pension plan owned at least one share in one or more Belgium companies. The Kingdom of Belgium further alleges that the individuals or entities that created the pension plan caused the pension plan to submit putatively fraudulent applications for a tax refund under a double taxation treaty between the United States and the Kingdom of Belgium, and that the Kingdom of Belgium paid a tax refund to the pension plan when it should not have paid such a refund.

With respect to the FGC Securities Defendants, the Kingdom of Belgium merely alleges, without any specificity, that the pension-plan defendants "worked with" the FGC Securities Defendants. The Kingdom of Belgium alleges no well-pleaded facts as to what the FGC Securities Defendants actually did or knew. The Complaints in each Action contain substantially the same 10 allegations against the FGC Securities Defendants: aside from identifying who those Defendants are, the Complaints merely allege the FGC Securities Defendants provided cash equity confirmations documenting that a pension plan purchased a security. The sole claim brought by the Kingdom of Belgium against the FGC Securities Defendants in each Action—a claim for aiding and abetting fraud—is a threadbare recital of the elements of a claim for aiding and abetting fraud with none of the particularity required by Fed. R. Civ. P. 9(b), *see Berdeaux v. OneCoin Ltd.*, No. 19-CV-4074 (VEC), 2021 WL 4267693, at *18 (S.D.N.Y. Sept. 20, 2021) (stating, "Plaintiffs' claim[] for aiding and abetting fraud . . . [is] . . . subject to the heightened pleading standards under Rule 9(b)").

In light of each Complaint's lack of well-pleaded facts, each Action fails to state a plausible claim to relief for aiding and abetting fraud.

The FGC Securities Defendants are also analyzing whether to seek dismissal on the grounds that the statute of limitations has run pursuant to Fed. R. Civ. P. 12(b)(6), *see also Sterling v. Deutsche Bank Nat'l Tr. Co. as Tr. for Femit Tr. 2006-FF6*, No. 19-CV-205 (GBD) (KNF), 2019 WL 10960256, at *5 (S.D.N.Y. Dec. 10, 2019) (stating, a motion to dismiss on the ground of statute of limitations "is properly treated as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted"), and may also move on that ground.

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Because good cause exists to move to dismiss the Complaints in each Action, the FGC Securities Defendants respectfully request that any pending deadlines with respect to their time to respond to the Complaints be stayed and that the Court enter a briefing scheduling, such that the FGC Securities Defendants' motion to dismiss is due November 30, 2021. The FGC Securities Defendants further request, given the substantial overlap in allegations and law, that the Court grant leave for the FGC Securities Defendants to file a single, omnibus motion to dismiss in response to all of the Complaints in each Action.

Thank you for your consideration.

Sincerely,

Carlton Fields, P.A.

/s/ Natalie A. Napierala
Natalie A. Napierala